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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 449

REGULAR COMMON CARRIERS, CONFERENCE OF
THE AMERICAN TRUCKING ASSOCIATIONS,
INC.,

Appellant,

vs.

HANCOCK TRUCK LINES, INC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF INDIANA.

STATEMENT AS TO JURISDICTION

B. W. LATOURETTE,
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Of Counsel.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

Civil Action No. 795

HANCOCK TRUCK LINES, INC.,

vs.

Plaintiff,

UNITED STATES OF AMERICA AND INTERSTATE
COMMERCE COMMISSION,

Defendants.

JURISDICTIONAL STATEMENT BY THE DEFENDANT-APPELLANTS UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

The intervening defendant-appellant, Regular Common Carrier Conference of the American Trucking Associations, Inc., a corporation, respectfully presents the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment or decree in the above-entitled cause sought to be reviewed.

A. Statutory Provisions

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47a (Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913; c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41(28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, sec. 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, sec. 35, 31 Stat. 85; April 30, 1900, c. 339, sec. 86, 31 Stat. 158; March 3, 1909, c. 269, sec. 1, 35 Stat. 838; March 3, 1911, c. 231, secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, sec. 2, 38 Stat. 804; February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

B. Date of the Judgment or Decree Sought to be Reviewed and the Date upon which the Application for Appeal was Presented

The decree sought to be reviewed was entered on May 25, 1944. The petition for appeal was presented and allowed on July 22, 1944, and an assignment of errors filed.

C. Nature of Cause and of Rulings Below

This is an appeal from a final decree of the District Court of the United States for the Southern District of Indiana, Indianapolis Division, entered May 25, 1944, declaring illegal and void an order of the Interstate Commerce Commission made August 4, 1943, in *Globe Cartage Co., Inc., Common Carrier Application*, No. NC-3339, as issued, enjoining the enforcement of an integral portion of said order, viz., the portion thereof requiring that the

general commodities to be carried under authority of said order be such as are moving under bills of lading of a freight forwarder. The report made by the entire Commission on reconsideration, found upon substantial evidence that on the "grandfather" date, June 1, 1935, and continuously thereafter, the applicant carried only commodities which were moving upon bills of lading issued by freight forwarders. The Commission's order authorizes the applicant (to which the plaintiff is successor) to operate over certain routes described in said report (which are not in issue in this case) as a common carrier of general commodities which are moving under bills of lading of freight forwarders. A copy of the Commission's said report and order of August 4, 1943, is hereto attached.*

The plaintiff as successor in interest to the applicant aforesaid in its complaint contended that since the Commission had found the applicant to be a common carrier it could not lawfully specify that the Globe could haul only commodities moving on bills of lading issued by forwarders even though the evidence showed that this was the only kind of operation the Globe carried on during the "grandfather" period. The Court rendered no opinion, but made findings of fact and conclusions of law, a copy of which is attached hereto.

The questions presented by this appeal are substantial. They involve the interpretation and application of sections 5, 203, 204, 206, 208 of the Interstate Commerce Act, relating to the scope of the authority of the Commission to specify the character of common carrier operations carried on under a "grandfather" certificate. The action of the

* (Clerk's note. The orders of the Commission and opinion of the District Court are printed as an appendix to the Statement as to Jurisdiction in the case of *U. S. et al. v. Hancock Truck Lines, Inc.*, No. 448 October Term, 1944 and are not repeated here.)

court appears contrary to the well-established principle that the operations authorized under a "grandfather" certificate should be such as to assure a substantial parity between applicant's future operations and those carried on bona fide by the applicant on the "grandfather" date and subsequently thereafter.

D. Cases Sustaining the Supreme Court's Jurisdiction on Appeal

United States v. Caroline Freight Carriers Corp., 315 U. S. 475;

Alton Railroad Co. v. United States, 315 U. S. 15;

Noble v. United States, 319 U. S. 88;

Crescent Express Lines v. United States, 320 U. S. 401;

Board of Trade of Kansas City v. United States, 314 U. S. 534;

Union Stock Yard Co. v. United States, 308 U. S. 213;

United States v. Pan American Petroleum Corp., 304 U. S. 156;

United States v. American Sheet & Tin Plate Co., 301 U. S. 402;

United States v. Baltimore & Ohio R. R. Co., 293 U. S. 454;

Mississippi Valley Barge Co. v. United States, 292 U. S. 282;

Florida v. United States, 292 U. S. 1;

Tagg Bros. & Moorhead v. United States, 280 U. S. 420;

Assigned Car Cases, 274 U. S. 564;

Virginian Ry. v. United States, 272 U. S. 658;

Western Paper Makers' Chemical Co. v. United States, 271 U. S. 268;

Texas & Pacific Ry. Co. v. United States, 162 U. S. 197.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated — —, 1944.

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